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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/700,216	08/20/96	STUFFLEBEAM	J

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PM21/0206

EXAMINER
BATSON, V

ART UNIT	PAPER NUMBER
3616	

DATE MAILED:

02/06/98

*S*  
*2/06/98*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/700,216**

Applicant(s)  
**STUFFLEBEAM ET AL.**

Examiner  
**VICTOR BATSON**

Group Art Unit  
**3616**



☒ Responsive to communication(s) filed on Dec 22, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Dec 22, 1997 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

**Specification**

1. The disclosure is objected to because of the following informalities: On page 28 line 5, the specification was amended by applicant to read "As best shown in figure the rotor 320...", with a figure number now missing after "figure". Appropriate correction is required.

**Double Patenting**

2. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and © may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-15 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-93 of copending Application No. 08/700225, and over claim 22 of copending Application No. 08/700217. This is a provisional

double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending applications and would be covered by any patent granted on those copending applications since the referenced copending applications and the instant application are claiming common subject matter, as follows: The subject matter recited in claims 1-20 of a *vacuum seed metering apparatus comprising a housing a disc and an opening* is fully disclosed in the previously cited applications. The allowance of this claim would extend the rights to exclude covering the device comprising a housing, a seed disc and an agitator, or comprising a housing a seed disc and a seed singulator assembly. Because of the phrase "comprising", the claim not only would provide protection to a seed metering mechanism including a housing a seed disc and an opening, but also extends patent coverage to the disclosed combination of a seed metering mechanism including a housing, a seed disc, an opening, and an agitator and seed singulator assembly. Likewise, if allowed, the claim of the instant application, because of the phrase *comprising*, not only would provide patent protection to the claimed combination of a vacuum seed metering mechanism including a housing, a seed disc and an opening, but would also

extend patent coverage to the combination of a vacuum seed metering mechanism including a housing, a seed disc, an opening, and an agitator and seed singulator assembly already disclosed and covered by the claims in the other applications. Thus, the controlling fact is that patent protection for the device, fully disclosed in and covered by the claims of the copending applications, would be extended by the allowance of the claims in the instant application.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-20 have been considered. The examiner agrees with applicant's arguments and has accordingly withdrawn the previous prior art rejection. However upon a subsequent review of copending Application No. 08/700225 and copending Application No. 08/700217 discussed above, a new rejection has been applied.

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**Inquiries**

5. Any inquiry concerning this communication should be directed to Examiner Victor Batson whose telephone number is (703) 305-6356. The examiner can be normally reached Monday through Friday (except Wednesday) from 7:00 am to 5:00 pm, Eastern Standard Time.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Carone, can be reached on (703) 306-4198. The fax phone number for this Group is (703) 308-1113.

*Victor Batson*

**VICTOR BATSON  
PATENT EXAMINER  
GROUP 3500  
Au 3616**

VB  
February 2, 1998